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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-------------------------|------------------|
| 09/838,618 | 04/19/2001 | Brett T. Haarala | 10123/01101 | 3578 |
| 7590 | 12/23/2005 | | EXAMINER | |
| Fay Kaplun & Marcin, LLP 150 Broadway Suite 702 New York, NY 10038 | | | KEASEL, ERIC S | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3754 | |
| | | | DATE MAILED: 12/23/2005 | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|---------------------------------|-----------------|----------------|
| Communication Re: Appeal | Application No. | Applicant(s) |
| | 09/838,618 | HAARALA ET AL. |
| | Examiner | Art Unit |
| | Eric Keasel | 3754 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. The Notice of Appeal filed on _____ is not acceptable because:
 - (a) it was not timely filed.
 - (b) the statutory fee for filing the appeal was not submitted. See 37 CFR 41.20(b)(1).
 - (c) the appeal fee received on _____ was not timely filed.
 - (d) the submitted fee of \$_____ is insufficient. The appeal fee required by 37 CFR 41.20(b)(1) is \$_____.
 - (e) the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.
 - (f) a Notice of Allowability, PTO-37, was mailed by the Office on _____.

2. The appeal brief filed on _____ is NOT acceptable for the reason(s) indicated below:
 - (a) the brief and/or brief fee is untimely. See 37 CFR 41.37(a).
 - (b) the statutory fee for filing the brief has not been submitted. See 37 CFR 41.20(b)(2).
 - (c) the submitted brief fee of \$_____ is insufficient. The brief fee required by 37 CFR 41.20(b)(2) is \$_____.

The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. See 37 CFR 41.37(a)(1). Extensions of time may be obtained under 37 CFR 1.136(a). See 37 CFR 41.37(e).

3. The appeal in this application is DISMISSED because:
 - (a) the statutory fee for filing the brief as required under 37 CFR 41.20(b)(2) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
 - (b) the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
 - (c) a Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on _____.
 - (d) other: See Continuation Sheet.

4. Because of the dismissal of the appeal, this application:
 - (a) is abandoned because there are no allowed claims.
 - (b) is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
 - (c) is before the examiner for consideration.

Continuation of 3. (d) Other: An Appeal Brief was filed on February 28, 2005. A Notification of Non-Compliant Appeal Brief was mailed April 25, 2005, which stated that to avoid dismissal of the appeal, applicant must file a complete new brief in compliance with 37 CFR 41.37 within 1 month (extension of time were available under 37 CFR 1.136). An Appeal Brief was filed on May 2, 2005 that was again non-compliant. Although the examiner could have dismissed the appeal at that time, the examiner again notified applicant the Appeal Brief was non-compliant. The time period was not restarted. An Appeal Brief was filed on September 19, 2005 with a 4-month extension of time. This Appeal Brief was again non-compliant and applicant was again notified of the non-compliance. The time period was not restarted. Another Appeal Brief was received in the office on November 10, 2005 with an unsigned certificate of mailing (therefore the date of receipt is the date this paper is considered filed). It appears that applicant intended to extend the period of response to the full six months allowed by statute because there is a request for a 1-month extension of time. However, applicant appears to be requesting the first month's extension again rather than the difference between the fifth-month extension and the four-month extension that was already paid for. In either case, the six-month statutory deadline to the Notification of Non-Compliant Appeal Brief that was mailed April 25, 2005 is October 25, 2005. So, the last Appeal Brief filed on November 10, 2005 is untimely.



Eric Keasel 17 Nov 2005

Eric Keasel
Primary Examiner
Art Unit: 3754